

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

MELVIN E. PUSEY,	:	C.A. No. S15M-04-015 RFS
	:	
Petitioner,	:	
	:	
v.	:	
	:	
STATE OF DELAWARE,	:	
DEPARTMENT OF CORRECTION,	:	
	:	
Respondent.	:	

ORDER

1) Melvin E. Pusey (“petitioner”) seeks a writ of mandamus regarding credit time he maintains is due him in the criminal case of *State v. Pusey*, Def. ID# 9705016696. He requests credit for time served as well as meritorious credits earned during his incarceration **before** his sentencing on his violation of probation on January 22, 2015. The total amount of meritorious good time credits he seeks consists of 423 days.

2) In order to achieve a better understanding of petitioner’s convoluted criminal history and the credits for time served due him, the Court requested that DOC Records (“Records”) doublecheck all of petitioner’s sentences and time served to determine if he was entitled to more credit for time served than he had been awarded.¹ Toby Davis, an employee of Records, provided information on credit time by way of an affidavit.

¹A more detailed examination of petitioner’s criminal history and periods of incarceration appear in this Court’s December 9, 2015 letter.

3) The criminal file and Mr. Davis' affidavit establish that as of January 22, 2015, petitioner was entitled to the following days of credit time: **187** days from June 2, 1997 through December 5, 1997; **735** days from October 4, 2012 through October 8, 2014; **6** days from October 8, 2014 through October 13, 2014; **73** days from October 13, 2014 through December 24, 2014; and **30** days from December 24, 2014 through January 22, 2015. Thus, as of January 22, 2015, petitioner was entitled to **1,031** days of credit time, or 2 years 9 months and 27 days, of credit time. At the time of sentencing on January 22, 2015, the Court had 2 years, 2 months and 3 days of the original sentence to give petitioner, not the 2 years 10 months as ordered. Although the January 22, 2015 sentence said that the Court took into consideration all the time previously served, the affidavit shows that it did not.

4) The Court has entered a corrected order in *State v. Pusey*, Def. ID# 9705016696, which gives petitioner the correct amount of credit time due him as of January 22, 2015. A copy of that corrected order is being mailed to petitioner and has been provided to respondent.

5) Petitioner also argues respondent has failed to award him his meritorious credits earned during his incarceration **before** his sentencing on his violation of probation. The total amount of meritorious good time credits he seeks consists of 423 days. Upon violating his probation, petitioner was subject to the forfeiture of all good time accrued before the date of his offense.² Thus, petitioner is not entitled to credit for the 423 meritorious days he accrued before his violation of probation hearing.

6) This Court does not issue a writ of mandamus unless the petitioner has a clear legal

²11 *Del. C.* § 4382 (a) and (b); *Mifflin v. State*, 89 A.3d 477 (Del. March 18, 2014) (TABLE); *Goodwyn v. Carroll*, 2002 WL 1767235 (Del. Super. July 26, 2002).

right to the performance of an official duty by an agency, no other adequate remedy is available, and the agency arbitrarily has failed or refused to perform its duty.³ The Court has corrected petitioner's sentencing order in *State v. Pusey*, Def. ID# 9705016696, and awarded him all credit for time served. Thus, this issue is moot. With regard to the 423 days of meritorious credit, petitioner has failed to show he has a clear legal right to have previously earned good time credits applied to his sentence. In conclusion, he is not entitled to the issuance of a writ of mandamus.

7) For the foregoing reasons, the petition seeking a writ of mandamus is **DENIED**.

IT IS SO ORDERED THIS 4TH DAY OF FEBRUARY, 2016.

/s/ Richard F. Stokes

JUDGE

cc: Prothonotary's Office
Melvin E. Pusey
Stuart B. Drowos, Esquire
Gregory E. Smith, Esquire
State v. Pusey, Def. ID# 9705016696

³*Land v. Carroll*, 810 A.2d 350, * 1 (Del. Nov. 14, 2002) (TABLE).